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OFFICIAL OPINION

Stefan E. Ritter, Executive Director
Georgia Government Transparency and Campaign Finance Commission
200 Piedmont Avenue SE
Suite 1402 – West Tower
Atlanta, Georgia 30334

Re: County and municipal governments may issue notices of fees due for statutory late filings by candidates and committees under the Georgia Government Transparency and Campaign Finance Act of 2010, but those governments are not authorized otherwise to enforce the provisions of the Act or to retain any portion of the late fees imposed under the Act.

Dear Mr. Ritter:

You have requested my opinion regarding whether the Georgia Government Transparency and Campaign Finance Act of 2010¹ (the “Act”) allows for local governments and municipalities to issue late fee notices or keep late fees for campaign contribution disclosure reports and personal financial disclosure statements. In addition, you have inquired whether any local filing officers have the power to enforce the Act against any candidate, officer, or campaign committee through administrative or civil action, and whether they can waive or otherwise forgive amounts due from a candidate or campaign committee for late-filed reports. While local governments may independently establish and determine whether a filing by candidates is late under the Act, those governments are not authorized otherwise to enforce the provisions of the Act through either administrative or civil actions, nor may those governments retain any portion of the late fees imposed by the law. Similarly, no local government entity may waive, alter, or otherwise forgive any late fee assessed against a candidate or campaign committee under the Act.

The applicable law

Under the Act, candidates for public office and candidate campaign committees are required to file campaign contribution disclosure reports. However, there are different requirements and related penalties for noncompliance. For state-level candidates and campaign committees, the Act provides:

The candidate or the chairperson or treasurer of each campaign committee organized to bring about the nomination or election of a candidate for any office and the chairperson or treasurer of every

¹ 2010 Ga. Laws 1173.

campaign committee designed to bring about the recall of a public officer or to oppose the recall of a public officer or designed to bring about the approval or rejection by the voters of any proposed constitutional amendment, state-wide proposed question, or state-wide referendum shall electronically sign and file with the commission the required campaign contribution disclosure reports²

O.C.G.A. § 21-5-34(a)(1)(A) (Supp. 2015). The separate requirements for county candidates and committees are:

A candidate for [an elected county office and every elected member of a local board of education] or the chairperson or treasurer of such candidate's campaign committee shall sign and file the required disclosure reports with the election superintendent in the county of election. . . . The election superintendent shall transmit a copy of each such report to the commission, electronically by eFiling or eFax, not later than 30 days after the end of the grace period.

O.C.G.A. § 21-5-34(a)(3) (Supp. 2015). Finally, for municipal candidates and committees, the Act provides:

A candidate for [every elected municipal office] or the chairperson or treasurer of such candidate's campaign committee shall sign and file the required disclosure reports with the municipal clerk in the municipality of election or, if there is no clerk, with the chief executive officer of the municipality; provided, however, that a municipality and a county may enter into an agreement whereby such candidates, chairpersons, or treasurers shall file the required disclosure reports with the county election superintendent instead. . . . The municipal clerk, chief executive officer of the municipality, or county election superintendent, as applicable, shall transmit a copy of each such report to the commission, electronically by eFiling or eFax, not later than 30 days after the end of the grace period.

O.C.G.A. § 21-5-34(a)(4) (Supp. 2015).

Similarly, the Act requires public officials at the state, county, and municipal level to file personal financial disclosure statements. For state-wide elected public office, those candidates

² The Code specifically defines the term "commission" as the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission"). O.C.G.A. §§ 21-5-3(5) (Supp. 2015), 21-5-4 (Supp. 2015).

shall file with the commission a financial disclosure statement from the preceding calendar year. O.C.G.A. § 21-5-50(a)(1) (Supp. 2015). Elected county officials, however, including every elected member of a local board of education, are required to file personal financial disclosure statements with the election superintendent of that county. O.C.G.A. § 21-5-50(a)(3.1) (Supp. 2015). Every elected municipal official is required to file personal financial disclosure statements with the municipal clerk in the municipality of the election or, if there is no clerk, with the chief executive officer of the municipality. *Id.* As with campaign contribution disclosure reports, those personal financial disclosure reports filed with the election superintendent, municipal clerk, or chief executive officer must be transmitted electronically by eFiling or eFax to the commission not later than 30 days after the close of the reporting period. *Id.*

For campaign contribution disclosure reports, the deadlines for reports to be filed are set forth at O.C.G.A. § 21-5-34(c) (Supp. 2015). For covered public officers, a personal financial disclosure report for the preceding calendar year shall be filed “not before the first day of January nor later than July 1 of each year in which such public officer holds office other than an election year” O.C.G.A. § 21-5-50(a)(1) (Supp. 2015).

Analysis

If a candidate is late filing either the campaign contribution disclosure report or personal finance disclosure statement to the Commission, county election superintendent, or municipal clerk, the candidate is subject to the fees and fines set forth in O.C.G.A. §§ 21-5-34(k)(1) (Supp. 2015) and 21-5-50(f)(1) (Supp. 2015). These sections set out the applicable late fees for campaign contribution disclosure reports and personal financial disclosure statements, and they incorporate the same fee schedule for late-filed reports and statements. The statute for campaign contribution disclosure reports at issue provides:

In addition to other penalties provided under this chapter, a late fee of \$125.00 *shall be imposed by the person or entity* with which filing is required for each report that is filed late, and *notice of such late fee shall be sent to the candidate and the candidate’s committee in the same manner by which the penalized report was filed with the commission.* However, if the report in question was not filed or was filed with the commission in a manner other than electronic filing or certified mail, return receipt requested, the commission shall utilize certified mail, return receipt requested, to notify the candidate and the candidate’s committee of the late fee due. The notice shall include the schedule of increasing late fees for late filing and the dates upon which such late fees shall be increased. In addition, a later fee of \$250.00 shall be imposed on the fifteenth day after the due date for such report if the report has not been filed by such date. A late fee of \$1,000.00 shall be

imposed on the forty-fifth day after the due date for such report if such report has not been filed. Notice by electronic means does not satisfy the requirements of this paragraph; and any increased late fees shall be stayed until at least ten days after proper notice has been given as specified in this paragraph.

O.C.G.A. § 21-5-34(k)(1) (Supp. 2015)³ (emphasis added).

Your question focuses on the meaning and intent of the phrase “shall be imposed” in both § 21-5-34(k)(1) (Supp. 2015) and its companion statute for personal financial disclosure filings, § 21-5-50(f)(1) (Supp. 2015). Since the Act only gives three places to file, the “person or entity” referred to in § 21-5-34(k)(1) (Supp. 2015) is either the Commission, the county election superintendent, or the municipal clerk, depending on the office held or sought. However, it is my opinion that the language “shall impose,” in this context, does not denote the ability to seek civil or administrative action against another. Elsewhere in the Act, the General Assembly uses the word “enforce” to signify the actual ability to seek civil or administrative penalties. In O.C.G.A. § 21-5-6 (b)(14)(C)(iv) (Supp. 2015), for example, the Attorney General is given the authority to “enforce” any civil penalties provided for in the rulings of the Commission. Given the use of the different terminology within the same set of statutes, the rules of statutory construction mandate that the General Assembly intended to describe two separate kinds of actions or authority. The word “impose,” as used in § 21-5-34(k)(1) (Supp. 2015), cannot have the same meaning as “enforce,” otherwise § 21-5-34(k)(1) (Supp. 2015) would read persons or entities “shall enforce.” See *Carringer v. Rogers*, 276 Ga. 359, 363 (2003) (“[T]he cardinal rule in construing a legislative act, is to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.”).

The word “impose” in O.C.G.A. §§ 21-5-34(k)(1) (Supp. 2015) and 21-5-50(f)(1) (Supp. 2015) means “to establish or apply by authority.” *Impose*, Merriam-Webster Dictionary (2015), <http://www.merriam-webster.com/dictionary/impose> (last visited May 26, 2016); see also The American Heritage Dictionary 646 (2nd College ed. 1985) (“Impose: To establish or apply as compulsory; to apply or make prevail by or as if by authority.”). “In all interpretations of statutes, the ordinary signification shall be applied to all words . . .” O.C.G.A. § 1-3-1(b); see generally *Spence v. Rowell*, 213 Ga. 145, 150 (1957) (“it is well settled in this jurisdiction that all statutes are presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it; that they are to be construed in connection and in harmony with the existing law; and that their meaning and effect will be determined in connection, not only with the common law and the Constitution, but also with reference to other statutes and the decisions of the courts.”); accord *Wigley v. Hambrick*, 193 Ga. App. 903, 905 (1989). Giving the word “impose” its ordinary and common meaning and looking at its usage in the Act itself, the General Assembly’s intent was that when a report is filed in a county or

³ Note the use of the same language for the late fee schedule for personal financial disclosure statements. See O.C.G.A. § 21-5-50(f)(1) (Supp. 2015).

municipal election, the county election superintendent or the municipal clerk only has the ability to establish whether a filing is late and then determine the amount of the corresponding statutory late fee. Once a local authority decides that a report is late and establishes the amount of the statutory late fee due, the Act gives no further power to that local authority in the actual collection of the fee.

In sending notice of an imposed late filing penalty to the candidate or candidate's committee, if a candidate or committee files directly with the Commission, the Commission notifies the candidate of the imposition of the late filing penalty in the same fashion as the candidate's or committee's report was filed with the Commission. O.C.G.A. § 21-5-34(k)(1) (Supp. 2015). However, if a candidate or committee files with a county election superintendent or municipal clerk, then, in accordance with subsection (k)(1), "notice of such late fee shall be sent to the candidate and the candidate's committee *in the same manner by which the penalized report was filed with the commission.*" *Id.* (emphasis added).⁴ "[I]f the report in question was not filed or was filed with the commission in a manner other than electronic filing or certified mail, return receipt requested, *the commission* shall utilize certified mail, return receipt requested, to notify the candidate and the candidate's committee of the [imposed] late fee due." *Id.* (emphasis added). In the context of collection of campaign contribution disclosure reports and personal finance disclosure statements, the Act only empowers local governments to determine whether a candidate or committee has filed a report late and the corresponding late fee. *Id.*⁵

As for the disposition of the late fees, there is no statutory authority for any other body than the Commission to retain any portion of the late fees imposed. Both O.C.G.A. § 21-5-34(k)(2) (Supp. 2015) and O.C.G.A. § 21-5-50(f)(2) (Supp. 2015) provide that "[t]he commission shall retain \$25.00 of the first late fee received by the commission for processing pursuant to the provisions of Code Section 45-12-92.1." The regulatory framework adopted by the General Assembly provides that the *Commission* retains a portion of the late fee for processing. The balance of the collected monies is paid into the general fund of the state treasury as required by the Georgia Constitution. GA. CONST. Art. VII, Sec. III, Para. II. There also is no statutory authority for any local government entity to waive, alter, or otherwise forgive any portion of any late fee that is due under the Act.

Therefore, it is my official opinion that while local governments may impose the statutory late fees due for late filings by candidates or committees under the Georgia Government

⁴ Reports first filed with local government officials are transmitted to, rather than filed with, the commission; the local government official receiving such a report transmits a copy of such report to the commission by eFiling or eFax. O.C.G.A. § 21-5-34(a)(3) and (4) (Supp. 2015).

⁵ The provision regarding late fee notices is inconsistent in assigning responsibility for who informs a candidate or committee of a late fee owed and who formally sends notice to the candidate or committee of monies owed to the Commission. While I am providing my opinion on how this provision is to be interpreted under the canons of statutory construction, I would be remiss were I to fail to point out that this section would benefit from clarification by the General Assembly of the role local governments should play in providing initial notification to a late filer of both the existence of, and the amount of a fine resulting from, a late filing.

Transparency and Campaign Finance Act of 2010, those governments are not authorized otherwise to enforce the provisions of the Act through either administrative or civil actions, nor may those local governments retain any portion of the late fees imposed under the Act. Local governments are likewise without any statutory authority to waive, alter, or otherwise forgive any statutorily-imposed late fee.

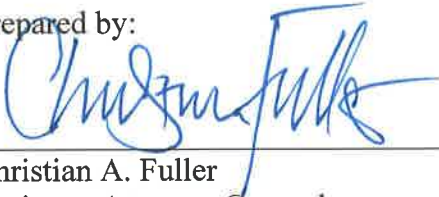
Issued this 31st day of May, 2016.

Sincerely,



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Prepared by:



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